

Title 6 – Citizenship
Chapter 1 – Adoption and Membership

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Legislative History

Enacted:

Enrollment Code, Ord. 183 (9/30/03), BIA (10/7/03).

Amended:

Amending STC Chapter 6-01 and Ordinance 183, Ord. 197 and Ord. 214, Ord 247 (3/7/06), BIA (3/21/06)

Amending STC Chapter 6-01 and Ordinance 183, Ord. 197 (11/5/03), BIA (11/12/03).

Amending STC Chapter 6-01 and Ordinances 183 and 197, Ord. 214 (1/6/04), BIA (1/22/04).

Repealed or Superseded:

Regulating Adoption, Defining Procedures for Approving Membership, Ord. 165 (4/1/03), BIA (4/21/03) (repealing Ord. 162 and reenacting Ord. 120).

Regulating Adoption, Defining Procedures for Approving Membership, Ord. 162 (9/10/02), BIA (10/2/02) (repealing Ordinance 120 and inconsistent provisions of any other prior Ordinance or Resolution).

Amendment to Ordinance 42, Ord. 120 (8/19/96), BIA (10/2/96) (amending and repealing Ordinance 42 and repealing inconsistent provisions of any other prior Ordinance or Resolution).

Governing the Adoption of New Members and Setting Qualifications on Future Membership, Ord. 42 (4/2/85), BIA (SOI 4/29/85) (repealing Ordinance 10 and superseding inconsistent provisions of any prior ordinance or resolution).

Adoption of New Members, Ord. 42 (revised) (5/23/80).
Associate Membership, Ord. 33 (7/13/76), Enacting Res. 76-5-1 (5/18/76), BIA
(1/28/77).
Ord. 10 (3/3/42).

Rescinded:

Amendment to Ordinance No. 33, Res. 79-4-594 (4/3/79), BIA (disapproved
4/10/79).

6-01.010 Title.

This Chapter shall be known as the “Swinomish Tribal Membership Code.”

[History] Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96).

6-01.020 Authority.

This Chapter is intended to implement Article II of the Swinomish Constitution, including Article II, section 2’s grant of authority to promulgate ordinances that limit future membership. This Chapter is enacted in accordance with 25 CFR Part 249.

[History] Ord. 247 (3/21/06); Ord. 214 (1/6/04); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 10 (3/3/42).

6-01.025 Findings.

The Senate hereby makes the following findings: (1) that tribal enrollment is an issue that is within its inherent authority to regulate; (2) that tribal enrollment is an issue that is central to the Swinomish Indian Tribal Community’s health, welfare, economic security, and political integrity; (3) that tribal enrollment is elemental to the Tribe’s very existence as an independent political community; (4) that no issue is more vital to the Tribe’s continued existence and integrity than its children and that the Tribe therefore has a compelling Tribal interest in maintaining the membership of such children; and (5) that tribal membership imposes minimal or no burdens on children and their families but that it has myriad benefits, in which a child and his or her family may partake at their option.

6-01.030 Definitions.

(A) Disenrollment. “Disenrollment” means involuntary withdrawal from tribal membership and includes removal from provisional membership under section 6-01.070.

(B) Child. “Child” for the purposes of this Chapter means a person under the age of twenty-one.

(C) Disenrollment of a Child. “Disenrollment of a child” refers to a parental request to withdraw a child from tribal membership that has been granted by the Tribe. Under this Chapter, all requests to withdraw a child from tribal membership are deemed to be involuntary on the part of the child.

(D) Relinquishment. “Relinquishment” means a voluntary withdrawal from tribal membership. Under this chapter, only adult members twenty-one years of age or over are considered capable of relinquishing their membership. Any child whose tribal membership was relinquished before the effective date of this amendment shall be considered for purposes of this chapter to have been disenrolled rather than relinquished.

(E) Parents. As used in this Chapter, “parents” includes biological parents and parents that have legally adopted a child and refers to both of a child’s parents, unless one parent shows by clear and convincing evidence that the other parent is deceased, legally insane, permanently or semipermanently legally incapacitated or that his or her parental rights have been terminated, in which case “parents” shall refer to the one remaining parent.

6-01.040 Automatic Membership.

No one who has, as an adult, previously relinquished his or her membership in the Swinomish Indian Tribal Community as defined in 6-01.080 or 6-01.085 shall be eligible for automatic membership. Upon submission and review of a completed application form, a person who has not previously relinquished his or her tribal membership shall be granted automatic membership in the Swinomish Indian Tribal Community pursuant to Article II, Section 1 of the Swinomish Constitution if he or she qualifies under (A) or (B) below:

(A) All persons of Indian blood lawfully enrolled upon the Swinomish Indian Reservation and residing there on June 1, 1935; and

(B) All Children born to any member of the Community who is a resident of the Reservation at the time of birth of said children.

[History] Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.050 Optional Membership.

The following procedure and requirements shall apply to all applicants for membership in the Swinomish Indian Tribal Community not otherwise eligible pursuant to Section 6-01.040 of this Chapter:

- (A) **Procedure.** No person has an absolute right or entitlement to membership in the Swinomish Indian Tribal Community pursuant to Section 6-01.050, regardless of whether the applicant meets the requirements and considerations set out below. Membership pursuant to this Section is at the absolute and exclusive discretion of the Senate and Swinomish General Council. Any person wishing to apply for membership pursuant to this Section, shall submit to the Enrollment Committee a completed application upon a form provided by the Enrollment Office.
- (B) **Application.** The completed application shall be delivered to the Enrollment Office, together with a certified copy of the applicant's birth certificate, appropriate genealogical information or other evidence, which may assist the Enrollment Committee. The Enrollment Committee shall examine the application and give its recommendation to approve or deny the application to the Senate.
- (C) **Requirements.** An applicant must satisfy the following requirements in order to be eligible for membership pursuant to this Section:
- (1) The applicant has one-fourth (1/4) or more Indian blood;
 - (2) The applicant is related by blood to, or is the spouse or legally adopted child of, a descendent of one (1) or more of the four (4) aboriginal tribes: Swinomish, Kikiallus, Samish, or Lower Skagit;
 - (3) The applicant is a citizen of the United States of America;
 - (4) The applicant has resided on or near the Swinomish Indian Reservation and participated in Swinomish Indian Tribal Community activities for a substantial amount of time; and
 - (5) The applicant has not previously relinquished his or her membership in the Swinomish Indian Tribal Community as defined in Section 6-01.080 or 6-01.085.
- (D) **Considerations.** The Senate, with the advice and counsel of the Enrollment Committee, shall consider the following factors prior to making a favorable recommendation to the General Council:
- (1) **Benefit to the Community.** The applicant has been or will likely be a benefit to the Swinomish Indian Tribal Community by virtue of his or her deeds, actions or status.
 - (2) **Moral Character.** The applicant should be of good moral character. Such things as, reputation in the community, conviction of felony offenses or offenses involving dishonesty, or any other relevant factors shall be considered.

- (3) **Intent.** There exists the likelihood that the applicant will be an active participating member of the Swinomish Indian Tribal Community for the duration of his or her membership.

- (E) **Associate Members.** Notwithstanding the above residency requirement, if the applicant has been an associate member of the Tribe for five (5) consecutive years, immediately preceding his or her application, and has exercised Swinomish treaty fishing rights for at least five (5) years, the Senate may waive the residency requirement.

[History] Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 10 (3/3/42).

6-01.055 Former Members Who Were Disenrolled as Children.

Any former member who was disenrolled from membership in the Swinomish Indian Tribal Community as a child shall be entitled, within eighteen months of reaching the age of twenty-one, to reapply for membership under the membership provisions that existed at the time that he or she enrolled. If there is a dispute as to when the former member enrolled or what membership provisions were in place at that time, the former member shall have the burden of proof as to these issues. After the eighteen-month period expires, the former member shall be entitled to apply under whatever membership provisions are then in place, and his or her prior disenrollment will not pose any handicap to such membership application.

6-01.060 Provisional Membership.

If the Senate determines that the requirements and considerations set out in Section 6-01.050 C and D are satisfied, and approves the application, the following procedures shall be followed before the applicant is added to the membership roll as a Provisional member:

- (A) **Senate Recommendation.** The Senate shall make a favorable recommendation to the General Council.
- (B) **General Council Vote.** The General Council shall vote on acceptance of the application. It shall take two-thirds (2/3) vote of the General Council with a quorum present to approve the applicant's provisional membership.
- (C) **Oath.** The Applicant shall subscribe to the following oath, within eighteen months of the General Council vote described above, administered by the Tribal Chairman or his or her designee:

“I _____, do hereby solemnly swear (or affirm) that I shall preserve, support, and protect the Constitution of the United States and the Constitution and Bylaws of the Swinomish Indians; that I pledge to actively

participate and work toward the betterment of Indian people and the Swinomish Indian Tribal Community, so help me God.”

- (D) **Provisional Membership.** Upon approval of the General Council and the taking of the oath, the applicant shall be added to the membership roll as a Provisional Member. Provisional members shall be entitled to all of the rights and privileges of members of the Swinomish Indian Tribal Community except as those rights and privileges are limited by this Chapter.
- (E) **Membership.** If after a period of five (5) years, no action has been taken by the Senate pursuant to the provisions of this Chapter to remove the Provisional member from the membership roll and terminate the Provisional member’s rights and privileges of membership, the Provisional member shall be added to the membership roll as a member of the Swinomish Indian Tribal Community.

[History] Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85).

6-01.070 Removal of Provisional Membership.

- (A) Pursuant to the provisions of Section 6-01.070 of this Chapter and in furtherance of the compelling Tribal interest in adding to its membership only those persons of high moral character who are willing to uphold their oath of admission to tribal membership, and who have a strong commitment to participate in the affairs and improvement of the Swinomish Indian Tribal Community, persons added to the membership roll as provisional members under this Chapter may be removed from the membership roll by the Senate and thereby forfeit all rights and privileges of membership in the Swinomish Indian Tribal Community. Such action by the Senate shall be taken only if begun during the five (5) year period of Provisional membership and only after such person is given:
 - (1) an opportunity to be heard and present evidence of why such membership should not be terminated, at a hearing before the Senate; and
 - (2) notice of the basis of the proposed termination of membership at least forty-five (45) days prior to the Senate hearing.

Senate action shall “begin” for the purposes of this Section when reasonable notice of the proposed termination has been provided to the applicant.

- (B) During the provisionary period, the Provisional member may be removed from the membership roll if the Senate makes any of the following determinations:
 - (1) that the Provisional member has failed to abide by the oath;

- (2) that a misrepresentation was made by the Provisional member in his or her application;
- (3) that the Provisional member has been convicted of a felony or a crime involving dishonesty;
- (4) that the Provisional member is no longer a United States citizen;
- (5) except for extenuating circumstances, the Provisional member has not exercised his or her right to vote in General Council elections or attended General Council meetings; or
- (6) that the Provisional member is found by clear and convincing evidence to have lacked the intent and commitment to become an active participating member of the Swinomish Indian Tribal Community. Evidence that the person has not been domiciled on or near the Reservation for a period of twenty-four (24) consecutive months during the provisional period shall create a presumption of such lack of intent and commitment, but shall be rebuttable by additional evidence to the contrary.

[History] Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.080 Dual Membership Prohibited.

- (A) **Present Membership.** No applicant for membership in the Swinomish Indian Tribal Community shall be a member of any other Indian tribe, recognized or non-recognized. If the applicant is a member of another tribe, he or she shall submit a relinquishment in writing of such membership. Such relinquishment may be conditioned upon acceptance for membership in the Swinomish Indian Tribal Community.
- (B) **Future Membership.** No Swinomish tribal member shall become a member of any other Indian tribe, recognized or non-recognized, without first relinquishing membership in the Swinomish Indian Tribal Community. Any member who shall become an enrolled member of any other tribe shall be removed from the membership roll of the Swinomish Indian Tribal Community and, unless such person is a child, he or she shall be deemed to have relinquished his or her membership. Such action shall be taken by the Senate only after such member is given:
 - (1) an opportunity to formally relinquish his or her membership to the other tribe(s) in writing and the member does not relinquish such membership;
 - (2) an opportunity to be heard and present evidence of why such membership should not be terminated, at a hearing before the Senate; and

- (3) notice of the basis of the proposed termination of membership at least forty-five (45) days prior to the Senate hearing.

[History] Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.085 Relinquishment and Disenrollment.

- (A) **Relinquishment.** Any member twenty-one years of age or older who wishes to relinquish his or her membership may do so through the following steps:

- (1) **Application.** Such person shall fill out an application for relinquishment, which may be obtained from the Enrollment Office, and shall provide the Enrollment Office with current contact information. If the member is relinquishing to join another tribe and he or she so desires, the member shall request on the application that his or her relinquishment be made conditional upon acceptance into such other tribe, and such request shall be honored.

- (2) **Appearance Before the Senate.** The member must request to be to be put on the Senate's agenda and must appear at the designated Senate meeting both to explain to the Senate the reasons for his or her relinquishment and to hear the Senate's explanation of the consequences of relinquishment under the current Code. At the conclusion of this appearance, the relinquishing member shall inform the Senate whether he or she wishes to go forward with the relinquishment process, and, if the member so desires, the relinquishment will be made final at that point unless the member has requested conditional relinquishment and has not yet been accepted into the other tribe.

- (B) **Disenrollment of a Child.** The parents of an enrolled member under the age of twenty-one may apply for disenrollment of such child. Such application shall include a showing that the child is eligible for enrollment in another federally recognized Indian tribe and that the parents of the child have begun the process of enrolling him or her in the other tribe. When the parents have made the required showing, the application shall be conditionally granted, pending the child's acceptance into the other tribe.

- (C) **Surrender of All Tribal Identification.** Upon relinquishment or disenrollment, the departing member shall surrender his or her tribal identification card to the Enrollment Office.

6-01.090 Tribal Identification Cards.

- (A) **Identification Cards Authorized.** The Enrollment Committee is authorized to issue Tribal Identification Cards to members of the Swinomish Indian Tribal Community. Such a card shall remain the property of the Swinomish Indian Tribal Community and shall be proof, for all purposes, that the person to whom the card is issued is a duly enrolled tribal member entitled to exercise all rights and privileges of membership in

the Swinomish Indian Tribal Community, including those reserved by the Treaty of Point Elliott, 12 Stat. 927.

(B) **Off-Reservation Treaty Fishing Cards.** The Tribal Identification Card shall serve as the tribally issued Off-Reservation Treaty Fishing Card provided for in 25 CFR 249.3.

(C) **Content of Identification Card.**

(1) **Front.** On the front of each Tribal Identification Card shall appear (a) a photograph, (b) the enrollment number, (c) the address, (d) the date of birth, (e) the Off-Reservation Treaty Fishing Card number, (f) the sex, (g) the eye color, (h) the hair color, (i) the weight, (j) the height, (k) and the signature, of the tribal member to whom it is issued, and may include such other information as the Enrollment Committee determines necessary.

(2) **Back.** The following language shall appear on the back of the card:

Property of the Swinomish Indian Tribal Community
11404 Moorage Way, LaConner WA 98257

This is to certify that the official records of the Swinomish Indian Tribal Community confirm that the person whose signature and photograph appear on the front of this card is an enrolled member of the Swinomish Indian Tribal Community, as provided by Article II of the Tribe's Constitution, and as such is entitled to all of the rights and privileges pertaining thereto, including those reserved by the Treaty of Point Elliott, 12 Stat. 927.

Tribal Enrollment Officer

Issued pursuant to STC 6-01.090 and 25 CFR 249.3. Civil or criminal penalties for alteration or unauthorized use or possession. STC 6-01.090 and STC 18-03.020-040.

(D) **Reporting Lost or Stolen Identification Cards; Replacement.** If a member's Tribal Identification Card is lost or stolen, the member shall immediately report the loss or theft to the Tribe's Enrollment Officer and to the Swinomish Tribal Police. A member who has reported that his or her Tribal Identification Card has been lost or stolen may be issued a replacement card for a fee of ten dollars (\$10.00).

(E) **Misuse of Tribal Identification Cards.** It shall be a violation of this Chapter:

- (1) for any tribal member to transfer to another person or allow another person to possess or use the tribal member's Tribal Identification Card;
 - (2) for any tribal member to possess or use or transfer to another person another member's Tribal Identification Card;
 - (3) for any non-member to possess or use or transfer to another person any Tribal Identification Card; or
 - (4) to alter a Tribal Identification Card or to possess an altered Tribal Identification Card.
- (F) **Penalties for Misuse.** In accordance with 25 CFR 249.6(b), the misuse of the Tribal Identification Card shall be subject to the terms and provisions of this Chapter and Chapter 18-03 rather than the penalties provided for by 25 CFR 249.6.
- (1) **Criminal Penalties for Misuse.** Any person subject to the criminal jurisdiction of the Tribe who violates this Section shall be guilty of a **Class C offense** for the first violation, and a **Class B offense** for the second and subsequent violations, and shall be fined and/or sentenced to jail or community service as provided in the Tribe's Criminal Code.
 - (2) **Civil Penalties for Misuse.** Any person not subject to the criminal jurisdiction of the Tribe who violates this Section shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) for the first violation and not more than two thousand five hundred dollars (\$2,500.00) for the second and subsequent violations.
 - (3) **Additional Penalties contained in Fishing Code.** In addition to the penalties established in this Chapter, any fisher who violates this Section during the exercise of treaty fishing rights shall be subject to the loss of fishing privileges under Section 18-03.040.

[History] Ord. 214 (1/6/04); Ord. 197 (11/5/03); Ord. 183 (9/30/03); Ord. 162 (9/10/02).

6-01.100 Abolition of Associate Membership.

The status of “Associate Membership” created in prior tribal law is hereby abolished; provided that any person granted the status of Associate Member pursuant to Ordinance 33 or amendments thereto enacted by the Senate shall retain all rights, duties, privileges and restrictions established by Ordinance 33 or amendments thereto subject to all terms and conditions expressed in these Ordinances.

[History] Ord. 183 (9/30/03).

6-01.105 Appeals of Enrollment Decisions.

Anyone adversely affected by an enrollment decision is entitled to appeal the decision to the Swinomish Senate within 45 days of receiving notice of the decision. The appeal shall be in writing and shall specify the grounds on which the challenge is based. Such appellant shall be granted a hearing, with at least thirty days notice, at which he or she may explain the basis of the challenge and present evidence to support the challenge. After the hearing or at the close of the hearing, the Senate shall render a decision and notify the appellant of the decision and the basis therefor, including the provisions of the Swinomish Tribal Code on which the decision is based. An appellant is entitled to only one appeal of any enrollment decision, and such appeal is the sole and exclusive means of challenging such a decision.

6-01.110 Repealer.

This Chapter repeals and supersedes Ordinance 165, Ordinance 33, and Resolution 2005-10-27 and other inconsistent enrollment codes, ordinances and resolutions.

[History] Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85).

6-01.120 Severability.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected and to this end the provisions of this Title are declared to be severable.

[History] Ord. 183 (9/30/03).

[Ed. Note. The following are the relevant provisions of Ordinance 33 regarding the rights, duties, privileges and restrictions of Associate members as established in Ordinance 33.]

If an Indian is found to have met all the above requirements by the Swinomish Indian Senate, or lawful designee thereof, the following procedure shall be followed to place the applicant on the Associate Membership rolls.

II. PROCEDURE

1. The applicant shall pay a \$5.00 fee to obtain a Swinomish Indian Tribal Community Associate Membership card. Said membership and card shall be renewed annually by the payment of the same fee, subject to change by the Swinomish Indian Senate. The card shall contain a photograph of the Associate member.

An Associate Member of the Swinomish Indian Tribal Community shall enjoy and be subject to the following rights, duties, privileges and restrictions:

III. RIGHTS, DUTIES, PRIVILEGES, AND RESTRICTIONS:

1. An Associate Member shall have no rights, duties, privileges or restriction in the Swinomish Indian Tribal Community, except as provided herein.

2. The Associate Member shall enjoy the privilege of fishing with the Swinomish Indian Tribal Community subject to the following restrictions.
3. No Associate Member shall fish under the authority of the Swinomish Indian Tribal Community without personal possession of an Associate Membership fishing permit and Associate Membership card. Personal possession shall mean that the Associate Member shall have possession of said permit and card on his or her person at all times he or she is fishing pursuant to this ordinance.
4. The permit entitles the holder to fish only in those areas designated on the face of the permit. In no other case shall a permit allow an Associate Member to fish within the waters of the Swinomish Indian Reservation, in the restricted primary exclusive areas of the Swinomish Indian Tribal Community, on in Skagit River or Skagit Bay.
5. Permittees fish pursuant to Ordinance No. 31 of the Swinomish Indian Tribal Community, insofar as it is applicable. Any violation of this ordinance or Ordinance No. 31 is deemed an offense and is punishable in the Court of the Swinomish Indian Tribal Community, as provided in the penalty sections of Ordinance No. 31 of the Swinomish Indian Tribal Community, except as otherwise provided herein.
6. All fish caught by a permittee and sold commercially shall be sold to the Fish Plant of the Swinomish Indian Tribal Community. Failure to do so, without good reason, is grounds for immediate perpetual revocation of permittee's Associate Membership status, by the Swinomish Indian Senate. Upon due notice and a fair hearing, the decision of the Senate shall be final.
7. Associate members shall pay the same fish tax to the Swinomish Indian Tribal Community required of all Swinomish Indian Tribal Community fishermen and fisherwomen. Failures to do so shall result in the suspension of all fishing privileges until said tax is paid in full. Failure to pay back taxes within three months from due date shall result in the revocation of Associate Membership status.
8. Associate Members are not entitled to share in any other right or benefit of the Swinomish Indian Tribal Community.
9. An Associate Member shall not be an enrolled member of any other recognized Indian Nation, tribe, band, or group or hold any permit to fish with or possess any fishing rights with any other Indian entity.

[History] Ord. 33 (7/13/76).